



Public Service Commission
State of North Dakota

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COMMISSIONERS

Susan E. Wefald, President
Leo M. Reinbold
Anthony T. Clark

Executive Secretary
Jon H. Mielke

August 22, 2001

600 E Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: sab@oracle.psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

Office of the Secretary
Federal Communications Commission
445 12th Street SW TW-A325
Washington D C 20554

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RE: CC Docket No. 99-129

94-129

Dear Secretary:

This letter is to notify the Federal Communications Commission, under the procedures established in the FCC's *First Order On Reconsideration* in CC Docket No. 94-129 released May 3, 2000, that the North Dakota Public Service Commission elects to take primary responsibility for resolving the slamming complaints of North Dakota consumers, effective 15 September 2001. The information required to be included in the state notification by § 64.1110(a) CFR is attached.

North Dakota Century Code Section 49-21-02.4 provides that telecommunications companies in North Dakota must comply with 47 CFR, part 64, subpart k regarding changes in a subscriber's selection of a telecommunications carrier, and the North Dakota Public Service Commission must enforce these provisions (copy attached).

Thank you for the opportunity to assist North Dakota consumers in this way. The North Dakota Commission looks forward to working with the FCC and other states to eradicate slamming altogether.

Sincerely,

Anthony T. Clark
Commissioner

Susan Wefald
President

Leo M. Reinbold
Commissioner

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Enclosures

Hand Signed
8/29/01

NORTH DAKOTA PUBLIC SERVICE COMMISSION SLAMMING COMPLAINT PROCEDURE

Complaint Filing Process

Consumers may contact the North Dakota Public Service Commission regarding their slamming complaints by letter, fax, or telephone call. There is no fee.

Mailing address:

Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

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Phone number: 1-701-328-2400

Fax phone number: 1-701-328-2410

E-Mail: None at this time.

On-Line Complaint Form: None at this time.

Fee: None.

Upon receipt of a slamming complaint, staff will request that the consumer provide a copy of the page of his or her telephone bill that contains the alleged unauthorized carrier's charges.

Slamming Enforcement Procedures

When a slamming complaint is received, staff will contact the alleged unauthorized carrier and request proof that, prior to switching the consumer, the carrier obtained authorization from the consumer in accordance with FCC rules.

Upon receipt of the carrier's proof of authorization, staff will review the material filed by the carrier and the consumer in order to make a preliminary conclusion regarding compliance.

If staff concludes the verification provided by the carrier complies, the consumer and the carrier will be notified that staff concluded no slam occurred. Amounts billed by the carrier are then owed by the consumer and the consumer will be so informed.

If staff concludes the verification does not comply, then the carrier and consumer will be informed that the staff believes a slam did occur and that the FCC liability rules apply. Staff will use the FCC slamming brochure and fact sheets (copies attached) to inform consumers and carriers of their rights and responsibilities regarding a slamming incident.

If the carrier fails to provide proof of authorization or does not respond to the complaint at all, staff may conclude a slam did occur and will notify the carrier and consumer of that finding.

Formal Complaint

A carrier or consumer who is not satisfied with the informal resolution of a slamming complaint may pursue the matter further by filing a formal complaint with the North Dakota Public Service Commission.

Complaint Tracking

Staff will enter each slamming complaint into the consumer contact database. We will regularly file information with the FCC that details slamming activity in North Dakota.

Primary contact: Illona A. Jeffcoat-Sacco
Director, Public Utilities Division
701-328-2407
ijs@oracle.psc.state.nd.us

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Additional Remedies

In addition to resolving individual consumers' slamming complaints, the North Dakota Commission is also authorized by state law to, after a hearing, assess fines against slamming carriers. Slamming carriers are also subject to the requirements and sanctions in North Dakota's Consumer Protection laws enforced by the North Dakota Attorney General's Consumer Protection Division.

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49-21-02.1

PUBLIC UTILITIES

Source: S.L. 1915, ch. 209, § 2; 1925 Supp., § 4812a2; R.C. 1943, § 49-2102; S.L. 1985, ch. 515, § 14.

49-21-02.1. Authority to exempt from regulation. Repealed by S.L. 1999, ch. 411, § 13.

49-21-02.2. Cross-subsidization prohibited. Revenues obtained from regulated telecommunications services, including essential and non-essential telecommunications services, may not be used to subsidize or otherwise give advantage to a telecommunications company in its unregulated services, and revenues from essential telecommunications services may not be used to subsidize or otherwise give advantage to a telecommunications company in its nonessential telecommunications services. The commission may require a telecommunications company to keep separate books of account, to allocate costs in accordance with procedures established by rule or order of the commission, and to perform other acts that will assist the commission in enforcing this section. The price charged for an unregulated telecommunications service or a nonessential telecommunications service must cover the cost of providing that service.

Source: S.L. 1985, ch. 515, § 16; 1989, ch. 566, § 9; 1993, ch. 469, § 8. came effective on July 18, 1989, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

Effective Date.

The 1989 amendment of this section be-

49-21-02.3. Directors, trustees, officers, and managers — Immunity from civil liability. Directors, trustees, and officers of mutual telephone companies, and the manager of a mutual telephone company who is the person most responsible for carrying out the policies and directives of the trustees, officers, or board of directors, are immune from civil liability for any act or omission relating to their service or function as a director, trustee, officer, or manager, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

Source: S.L. 1987, ch. 137, § 4.

Effective Date.

This section became effective July 8, 1987.

49-21-02.4. Unauthorized telecommunications service.

1. A telecommunications company shall comply with the provision of title 47, Code of Federal Regulations, part 64, subpart k, regarding changes in a subscriber's selection of a provider of telecommunications service. The commission shall enforce the provisions of title 47, Code of Federal Regulations, part 64, subpart k.
2. A telecommunications company may not initiate an intrastate telecommunications service to a subscriber without authorization. A subscriber for whom an intrastate telecommunications service is initiated without authorization is absolved from liability for charges imposed by the service provider if the subscriber notifies the service provider within thirty days after the first billing for the unauthorized service. Upon being informed by the subscriber that an unauthorized initiation of service has occurred, the telecommunications company providing the service shall cancel the service, inform the subscriber of the thirty-day absolution period, and refund any

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Source: S.L. 19

Effective Date.
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49-21-04

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hibited. Revenues obtained including essential and non-essential services may not be used to subsidize or to provide a telecommunications company in its unregulated telecommunications services with an advantage to a telecommunications company to keep separate accounts with procedures established in other acts that will assist in the determination of the price charged for an unregulated essential telecommunications service.

Effective on July 18, 1989, 90 days after the date of enactment pursuant to N.D. Const., Art. IV, § 13.

Officers, and managers — Immunities. Officers and managers of mutual telephone companies who are immune from civil liability for their function as a director, trustee, or officer, on constitutes gross or willful

Effective Date. This section became effective July 8, 1987.

Telecommunications service. A telecommunications company shall comply with the provision of part 64, subpart k, regarding a provider of telecommunications service to enforce the provisions of title 47, subpart k. A telecommunications company shall not initiate an intrastate telecommunications service without authorization. A telecommunications company shall be relieved from liability for charges if a subscriber notifies the service provider of first billing for the unauthorized service by the subscriber that an unauthorized service has occurred, the telecommunications company shall cancel the service, inform the subscriber of the cancellation period, and refund any

payments made by the subscriber for the service during the absolute period. The telecommunications company may rebill for the service provided before cancellation if the company determines the service initiation was authorized. The remedies provided in this section are in addition to any other remedies available at law.

3. If the commission finds an emergency exists that requires ex parte action, the commission may issue a cease and desist order without prior notice against a telecommunications company that the commission has reason to believe is in violation of this section or title 47, Code of Federal Regulations, part 64, subpart k. The cease and desist order must be:
 - a. Directed against the telecommunications company's marketing of telecommunications service, not the company's provision of service to current customers;
 - b. Accompanied by service on the telecommunications company of a commission order opening an investigation or a formal complaint regarding the company's compliance with this section; and
 - c. Accompanied by service on the telecommunications company of a notice of opportunity to be heard on the cease and desist order within fifteen days of issuance of the cease and desist order.
4. A telecommunications company that violates this section is deemed to have committed an unlawful practice in violation of section 51-15-02 and is subject to all the provisions, procedures, and penalties of chapter 51-15.

Source: S.L. 1999, ch. 414, § 1.

1999, pursuant to an emergency clause in section 3 of chapter 414, S.L. 1999.

Effective Date.

This section became effective March 25,

49-21-03. Articles of incorporation — Telephone — Telegraph. Repealed by S.L. 1985, ch. 515, § 26.

49-21-04. Price schedules filed with the commission. Each telecommunications company shall file with the commission in such form and detail as it may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

1. Schedules showing all prices, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any telecommunications service rendered to the public by such telecommunications company within this state;
2. All rules and regulations which in any manner affect the prices charged or to be charged for such service; and
3. All new prices and any price changes of essential services at least twenty days before the effective date of the new price or price change, unless the commission upon application and for good cause allows a lesser time, and except prices changed in accordance with subsection 1 of section 49-21-01.3, which will be filed at least ten days before the expiration of the thirty-day period mandated in that section. No price or price change is effective until filed in accordance with this chapter.